Chapter 3: Obtaining Protective Custody of a Child

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This chapter discusses taking temporary protective custody of a child pursuant to the Juvenile Code and related court rules and the Safe Delivery of Newborns Law. Court procedures and findings required after a child has been taken into protective custody are discussed, including judicial determinations required to establish a child's eligibility for foster care maintenance payments under federal law. This chapter also sets forth law governing the ordering of medical treatment or withdrawal of life support.

See Chapter 8 for a more complete discussion of placement of a child. See Section 16.9 for a discussion of the emergency removal of a child who was either not initially placed outside the home or was returned home from foster care.

3.1 Obtaining Temporary Protective Custody of a Child Without Court Order

"Absent exigent circumstances, a request for court action to protect a child must be in the form of a petition." MCR 3.961(A). "Exigent circumstances" are not defined in the applicable court rules or statutes. However, "[a]n officer may without court order remove a child from the child's surroundings and take the child into protective custody if, after investigation, the officer has reasonable grounds to conclude that the health, safety, or welfare of the child is endangered." MCR 3.963(A). See also MCL 712A.14(1) (any law enforcement officer, county agent, or probation officer may, without court order, take a child into custody if the child's "surroundings are such as to endanger his or her health, morals, or welfare.

. ."). A probable-cause determination need not be made prior to temporary removal and placement of a child pending investigation and preliminary hearing. *In re Albring,* 160 Mich App 750, 756–57 (1987).

*See Section 2.8 for a discussion of the required cooperation between DHS and law enforcement officials.

An "officer" is a "governmental official with the power to arrest or any other person designated and directed by the court to apprehend, detain, or place a minor." MCR 3.903(A)(16). This definition does not include a CPS worker. See also MCL 712A.14(1) (any local or state police officer, sheriff or deputy sheriff, or probation officer or county agent may take children into custody without court order). In fact, a CPS worker may be required to seek the assistance of law enforcement officers.*

3.2 Obtaining Protective Custody of a Child With Court Order

The court may order an officer or other person to immediately take a child into custody. MCR 3.963 states:

> **"(B) Court-Ordered Custody.**
>
> "(1) The court may order an officer or other person to immediately take a child into protective custody when, after presentment to the court of a petition,* a judge or referee has reasonable grounds to believe that conditions or surroundings under which the child is found are such as would endanger the health, safety, or welfare of the child and that remaining in the home would be contrary to the welfare of the child. The court may also include in such an order authorization to enter specified premises to remove the child.
>
> "(2) The order must indicate that the judge or referee has determined that continuation in the home is contrary to the welfare of the child and must state the basis for that determination."

*See Chapter 6 for a complete discussion of petition requirements.

While a referee may take the proofs and recommend such an order, a judge must sign the order. See SCAO Form JC 05b (Order to Take Child(ren) Into Protective Custody).

Establishing a child's eligibility for federal foster care maintenance payments. In order to establish a child's eligibility for federal foster care maintenance payments under Title IV-E of the Social Security Act, 42 USC 670 et seq., the court must make a finding that remaining in the home would be "contrary to the welfare of the child." 42 USC 672(a)(1). "'Contrary to the welfare of the child' includes, but is not limited to, situations in which the child's life, physical health, or mental well-being is unreasonably placed

at risk." MCR 3.903(C)(3). The applicable federal regulations, 45 CFR 1356.21(c) and (d), state as follows:

> "(c) *Contrary to the welfare determination.* Under [42 USC 672(a)(1)], a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. *If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.*
>
> "(d) *Documentation of judicial determinations.* The judicial determination[] regarding contrary to the welfare . . . must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.
>
> > (1) If the . . . contrary to the welfare judicial determination[is] not included as required in the court orders identified in paragraph[] . . . (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that [this] required determination[has] been made.
> >
> > (2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of . . . contrary to the welfare judicial determinations.
> >
> > (3) Court orders that reference State law to substantiate judicial determinations are not acceptable, even if State law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare . . . ." (Emphasis added.)

3.3 Required Investigation Before Placing a Child With Relatives Pending Preliminary Hearing

*See Sections 2.17–2.18 (DHS central registry) and 2.16(F) (CPS LEIN checks).

When custody is sought pursuant to a court order, the court must inquire of the person presenting the complaint or petition whether a member of the child's immediate or extended family is available to take custody of the child pending preliminary hearing. The court must also inquire whether a central registry clearance has been obtained, and whether a criminal history check has been initiated. MCR 3.963(B)(3).*

3.4 Required Procedures After a Child Is in Protective Custody

Whether custody of the child has been obtained with or without a court order, an officer or other person who takes a child into protective custody must follow the procedures set forth in MCR 3.963(C). That rule states:

> "(C) *Arranging for Court Appearance.* An officer or other person who takes a child into protective custody must:
>
> (1) immediately attempt to notify the child's parent, guardian, or legal custodian of the protective custody;
>
> (2) inform the parent, guardian, or legal custodian of the date, time, and place of the preliminary hearing scheduled by the court;
>
> (3) immediately bring the child to the court for preliminary hearing, or immediately contact the court for instructions regarding placement pending preliminary hearing;
>
> (4) if the court is not open, contact the person designated under MCR 3.934(B)(2) for permission to place the child pending preliminary hearing;
>
> (5) ensure that the petition is prepared and submitted to the court;
>
> (6) prepare a custody statement similar to the statement required for detention of a juvenile as provided in MCR 3.934(A)(4) and submit it to the court."

Definitions of "guardian" and "legal custodian." "'Guardian' means a person appointed as guardian of a child by a Michigan court pursuant to MCL 700.5204 or 700.5205, by a court of another state under a comparable

statutory provision, or by parental or testamentary appointment as provided in MCL 700.5202." MCR 3.903(A)(11). "'Legal Custodian' means an adult who has been given legal custody of a minor by order of a circuit court in Michigan or a comparable court of another state or who possesses a valid power of attorney given pursuant to MCL 700.5103 or a comparable statute of another state." MCR 3.903(A)(13).

Temporary placement of child pending preliminary hearing. MCR 3.903(C)(8) defines "placement" as "court-approved transfer of physical custody of a child to foster care, a shelter home, a hospital, or a private treatment agency." The child may not be placed in any secure facility designed to physically restrict the movements or activities of alleged or adjudicated juvenile offenders or to incarcerate adults. MCL 712A.15(4).

As explained in Section 3.1, MCR 3.961(A) and 3.963(A) allow an officer or other person to take custody of a child without a written instruction to do so from the court. However, the court is often contacted by telephone in these circumstances. MCR 3.963(C)(3) provides that, if the court is not open at the time a child is taken into custody, the officer or other person must contact the court for instructions regarding placement of the child pending preliminary hearing. Via telephone, the court provides authorization to place the child in "shelter care" and schedules a preliminary hearing. A written complaint (see SCAO Forms JC 01 and JC 02) may be completed soon afterward and submitted to the court.

The court must designate a judge, referee, or other person who may be contacted by the officer or other person taking a child into protective custody when the court is not open. In each county there must be a designated facility open at all times at which an officer or other person may obtain the name of the person to be contacted for permission to place the child pending preliminary hearing. MCR 3.934(B)(2).

The "custody statement" filed with the court should contain the grounds for and the time and location of the custody, and the names of persons notified and the times of notification, or the reason for failure to notify. See MCR 3.934(A)(4) and 3.963(C)(6).*

*See SCAO Forms JC 02 and 05b.

3.5 Time Requirements for Preliminary Hearing When a Child Is in Protective Custody

The child must be brought immediately before the court for a preliminary hearing or placed pending a preliminary hearing. MCR 3.963(C)(3). MCL 712A.14(2) states as follows:

> "If a child is not released . . . , the child and his or her parents, guardian, or custodian, if they can be located, shall immediately be brought before the court for a preliminary

> hearing on the status of the child, and an order signed by a judge of probate or a referee authorizing the filing of a complaint shall be entered or the child shall be released to his or her parent or parents, guardian, or custodian."

If the court is not open, a person designated by the court under MCR 3.934(B)(2) will give instructions on the time, date, and place of the preliminary hearing. MCR 3.963(C)(4).

*See Section 7.3 for a discussion of adjournments of preliminary hearings.

MCR 3.965(A)(1) contains the time requirements for conducting preliminary hearings when a child has been taken into protective custody.* That rule states:

> **"(A) Time for Preliminary Hearing.**
>
> "(1) *Child in Protective Custody.* The preliminary hearing must commence no later than 24 hours after the child has been taken into protective custody, excluding Sundays and holidays, as defined by MCR 8.110(D)(2), unless adjourned for good cause shown, or the child must be released."

3.6 Temporary Custody of a Child Admitted to a Hospital

If a child suspected of being abused or neglected is brought to a hospital for outpatient services or admitted to a hospital and the attending physician determines that releasing the child would endanger the child's health or welfare, the attending physician must notify the person in charge and the Department of Human Services (DHS). The person in charge may keep the child in protective custody until the next regular business day of the court. The court must then:

- order the child to remain in the hospital;
- order the child to be placed in custody as required by MCL 712A.14(3)(a)–(c);* or
- order the child to be released to the child's parent, guardian, or custodian.

*See Sections 3.4, above, and 8.2.

MCL 722.626(1).*

*See Section 2.11 for further discussion.

3.7 Ordering Medical Treatment for a Child

Consent to emergency medical treatment. MCL 722.124a(1) allows a court or agency to consent to emergency medical treatment if the child is placed outside the home. That statute states as follows:

> "A probate court, a child placing agency, or the department may consent to routine, nonsurgical medical care, or

> emergency medical and surgical treatment of a minor child placed in out-of-home care pursuant to . . . [MCL] 400.1 to 400.121 . . . , [MCL] 710.21 to 712A.28 . . . , or this act. If the minor child is placed in a child care organization, then the probate court, the child placing agency, or the department making the placement shall execute a written instrument investing that organization with authority to consent to emergency medical and surgical treatment of the child. The department may also execute a written instrument investing a child care organization with authority to consent to routine, nonsurgical medical care of the child. If the minor child is placed in a child care institution, the probate court, the child placing agency, or the department making the placement shall in addition execute a written instrument investing that institution with authority to consent to the routine, nonsurgical medical care of the child."

The definition of "placement" in MCR 3.903(C)(8) includes "court-approved transfer of physical custody of a child to . . . a hospital . . . ." In such cases, a preliminary hearing may be held in the hospital to determine that the child needs protection and that probable cause exists to believe that an offense against the child has been committed. See MCR 3.923(E), which allows a court to use a speaker telephone or similar device to facilitate hearings or protect the parties. In either case, a judge (not a referee) may then enter an order for medical or surgical care under MCL 722.124a(1).*

*See also Section 2.1(B) for discussion of ordering medical treatment over the religious objections of parents.

> **Note:** In the case described above, jurisdiction over the child has not been taken; rather, following the preliminary hearing, a petition has been authorized for filing, the child is in out-of-home placement, and specific medical procedures will be performed by medical personnel by order of the court. See Section 7.10 for a discussion of the required procedures during preliminary hearings. It should be noted that in such a case the court is not entering an order for medical or surgical care under MCL 712A.18(1)(f), which is one of the dispositional options available to the court after it has taken jurisdiction over the child. See Section 13.9(G).

Examinations pursuant to court order. MCL 712A.12 states that "[a]fter a petition shall have been filed and after such further investigation as the court may direct, in the course of which the court may order the child to be examined by a physician, dentist, psychologist or psychiatrist," the court may dismiss the petition or issue a summons to the persons who have custody or control of the child. See also MCR 3.923(B), which allows the court to order an evaluation or examination of a child, and MCR 3.923(C), which allows a court to permit photographing of a child concerning whom a petition has been filed.

Psychological evaluations have been defined by the Court of Appeals as routine care for emotionally disturbed children in temporary custody. *In re Trowbridge,* 155 Mich App 785, 787–88 (1986).

The AMB case and withdrawal of life support. In *In re AMB,* 248 Mich App 144 (2001), Baby Allison was born with severe heart and other defects that required her to remain on life support systems, with a poor prognosis for long-term survival. Within hours of her birth, Baby Allison was transferred from the hospital where she was born to Children's Hospital in Detroit. The child's putative father was also the father of the child's mother, who was 17 years old when she gave birth to Baby Allison and allegedly developmentally delayed. *Id.* at 149-50. Separate criminal and termination of parental rights proceedings were instituted against Baby Allison's father and his wife. *Id.* at 150. In the instant case, DHS filed an original petition alleging the sexual abuse of Baby Allison's mother, the pending termination proceedings against Baby Allison's putative father and his wife, and Baby Allison's mother's inability to make decisions regarding her child. The original petition sought temporary custody of the child. *Id.* at 152. Following a preliminary hearing, a referee authorized the petition, "ordered" the child to receive all medical treatment necessary to sustain her life, and placed the child in foster care or with a suitable relative. *Id.* at 153-54. Four days later, DHS filed an amended petition alleging that the child was being kept alive by life support systems, alleging that the child's mother was incapable of making an informed decision regarding the child's condition, and requesting that the court make a determination of the child's best interests. *Id.* at 155. At a second preliminary hearing, the court received testimony from one treating physician, who concluded that the life support measures had ceased to be treatment and were futile. A referee authorized the hospital to end life support measures after seven days (when the time to request review of the referee's recommendation would end), provided that "comfort care" was provided. *Id.* at 160-61. A "dispositional order" mirroring this authorization was entered that same day. *Id.* at 161. However, the hospital removed Baby Allison from life support systems before the seven-day period expired, and she died a few hours later.

Subject matter jurisdiction and the court's authority to make medical decisions concerning a child. The Court of Appeals first held that the trial court had subject matter jurisdiction over the child protective proceeding based on the original petition, and that that jurisdiction extended to the "best interests" determination regarding removal of life support. *Id.* at 170. The Court of Appeals noted that *In re Rosebush,* 195 Mich App 683 (1992), authorized courts to permit a parent or surrogate for an incompetent patient to make serious medical decisions, including the decision to withdraw life support, if the decision is based on the relevant criteria (which are discussed below). Courts may intervene in a decision to withdraw life support if "'the parties directly concerned disagree about treatment, or other appropriate reasons' exist." *In re AMB, supra* at 171, quoting *Rosebush, supra* at 687. The Court of Appeals concluded that Baby Allison's putative father's involvement in the related criminal and termination of parental rights

proceedings called into question his ability to make a decision on the child's behalf, and that the child's mother's alleged incompetence undercut her ability to make a decision regarding the child's treatment. Because of the lack of an appropriate surrogate and the urgency of the situation, there were "other appropriate reasons" for the trial court to intervene. *Id.* at 171-72.

> **Note:** It may be appropriate for a court to intervene when a parent has a conflict of interest regarding withdrawal of life support that may interfere with his or her ability to act in the child's best interests. "[T]he parent accused of causing the injury may face more severe criminal penalties should the child die rather than surviving for some time in a severely impaired or vegetative state. Medical providers may have significant concerns regarding the parent's ability to act in the child's best interest. When this situation presents itself, doctors will look to institutional ethics committees and the courts for guidance regarding end of life and other critical medical decisions." Paulsci and Stoika, *End of Life Decisions in Children With Concerns of Child Maltreatment,* 5 Mich Child Welfare L J 25 (2001). It is well established that a patient's removal from life support is not an intervening cause of the patient's death absolving a criminal defendant from criminal liability. See *People v Bowles,* 461 Mich 555, 559-60 (2000).

Ordering withdrawal of life support pursuant to MCL 712A.18f. In *In re AMB, supra,* the trial court purportedly enetered a "dispositional order" withdrawing life support from Baby Allison. After noting that courts have no authority to enter dispositional orders prior to adjudication, the Court of Appeals concluded that the order entered by the trial court could not have been a dispositional order because no adjudicative hearing was held. *Id.* at 176-77, citing *In re Macomber,* 436 Mich 386, 400 (1990).

Ordering withdrawal of life support pursuant to MCL 722.124a(1). As the Court of Appeals in *In re AMB, supra,* noted, MCL 722.124a(1), unlike MCL 712A.18f, is not tied to any particular phase of a child protective or other proceeding. However, the child must be placed in out-of-home care. *In re AMB, supra* at 178-79. Once the medical interventions under MCL 722.124a(1) cease to be "treatment," they may be stopped. *In re AMB, supra* at 179-80. Applying MCL 722.124a(1) to the facts of the case, the Court of Appeals first noted that hospital staff, not a foster parent or relative, cared for Baby Allison. Although a hospital does not fall within the definition of "child caring institution" in MCL 722.111(1)(b), the Court of Appeals concluded that the trial court had authority to order treatment under MCL 722.124a(1) because of its placement order and because there was a medical emergency. *In re AMB, supra* at 180-81. The trial court therefore also had authority to order the cessation of treatment under the statute when it became futile. *Id.* at 180. Testimony by one of the child's treating physicians provided the grounds to withdraw life support. *Id.* at 182.

The Court of Appeals stressed, however, that parties and courts "involved in protective proceedings must make *every* possible effort to hold an adjudication before authorizing withdrawal of life support." *Id.* at 182. (Emphasis in original.)

Applicable federal law does not prohibit an order withdrawing life support. Baby Allison's attorney argued that the federal Child Abuse Prevention and Treatment and Adoption Reform Act (CAPTA), 42 USC 5101 et seq., prohibited DHS from seeking an order to withdraw life support. *In re AMB, supra* at 183. This federal law assigns DHS the duty to prevent child neglect, including the "withholding of medically indicated treatment" of infants with life-threatening conditions. *Id.* at 184. However, a provision of CAPTA, 42 USC 5106g(6), contains exceptions allowing withdrawal of life support:

> "The term 'withholding of medically indicated treatment' means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment--
>
> > (A) the infant is chronically and irreversibly comatose;
> >
> > (B) the provision of such treatment would--
> >
> > (*i*) merely prolong dying;
> >
> > (*ii*) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
> >
> > (*iii*) otherwise be futile in terms of the survival of the infant; or
> >
> > (C) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane." *In re AMB, supra* at 184-85, quoting 42 USC 5106g(6).

The Court of Appeals concluded that the treating physician's testimony provided evidence that the exceptions in (B) and (C), above, applied.

The Court of Appeals also rejected the attorney's argument that withdrawal of life support violated Baby Allison's right to have her condition stabilized under the federal Emergency Medical Treatment and Active Labor Act (EMTALA), 42 USC 1395dd et seq. Case law interpreting EMTALA has limited its application to treatment in emergency rooms of conditions requiring immediate medical attention. *In re AMB, supra* at 187-92, citing *In re Baby K,* 16 F3d 590 (CA 4, 1994), and *Bryan v Rectors & Visitors of Univ of Virginia,* 95 F3d 349 (CA 4, 1996). The Court of Appeals in *In re AMB* concluded that there was no violation of EMTALA because no evidence showed that Baby Allison had been taken to the emergency room at Children's Hospital, and, at the time her life support was withdrawn, she had been admitted as a patient. *Id.* at 192-93.

The Court of Appeals also concluded that the federal Americans with Disabilities Act (ADA), 42 USC 12101 et seq., and Michigan's Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 et seq., cannot be used "to challenge the result of proceedings in a case that did not originally allege an ADA or PWDCRA violation." *In re AMB, supra* at 195, citing *Green v North Arundel Hospital Ass'n, Inc,* 730 A2d 221 (MD App, 1999).

Standards for withdrawing life support. The following standards must be applied before a court may enter an order permitting the withdrawal of life-sustaining medical care:

1. The court must determine whether the patient is competent to make medical decisions. A competent patient has an absolute right to make medical decisions, including the right to decline medical intervention. *In re AMB, supra* at 198-99, citing *Werth v Taylor,* 190 Mich App 141, 145 (1991). Neither the patient's youth nor his or her involvement in a child protective proceeding conclusively resolves the issue of competence. If the facts do not conclusively determine the issue of competence, the trial court should conduct an evidentiary hearing. *In re AMB, supra* at 199, citing *Rosebush, supra* at 681-82, and *In re Martin,* 450 Mich 204, 209-10 (1995).

2. If the patient is incompetent, the trial court must determine whether the "substituted judgment" or "best interests" legal standard applies. The Court of Appeals in *In re AMB, supra* at 199-200, summarized these standards as follows:

> "The substituted judgment standard seeks to fulfill the expressed wishes of a previously competent patient, including a 'minor of mature judgment.' The 'limited-objective' substituted judgment standard used in Michigan requires "'some trustworthy evidence that the patient would have refused the treatment, and the decision-maker is satisfied that it is clear that the burdens outweigh the benefits of that life for'" the patient.

> "The best interests standard applies when the patient has never been competent or has not expressed her wishes concerning medical treatment. The best interests standard includes, but is not limited to, examining:
>
> > 'Evidence about the patient's present level of physical, sensory, emotional, and cognitive functioning; the degree of physical pain resulting from the medical condition, treatment, and termination of the treatment, respectively; the degree of humiliation, dependence, and loss of dignity probably resulting from the condition and treatment; the life expectancy and prognosis for recovery with and without treatment; the various treatment options; and the risks, side effects, and benefits of each of those options.'" (Citations omitted.)

The trial court may appoint a guardian ad litem for a child-patient, depending upon the seriousness of the medical condition and the time allowed for the decision. *In re AMB, supra* at 202-03.

3. If it is alleged that a surrogate decisionmaker is incompetent to make a decision to withdraw life support from an incompetent patient, the court must receive evidence on the issue. The evidence must establish "that the person who would otherwise act as the surrogate decisionmaker for the incompetent patient is also incompetent to make the critical medical decision at issue. Further, the evidence must be clear and convincing." *Id.* at 204. See also *Id.* at 213-14 (clear and convincing evidence standard is required for both formerly competent patients and patients who have never been competent or expressed their wishes), citing *In re Martin, supra* at 225-29. Personal jurisdiction over a child in child protective proceedings alone is not a sufficient reason to order withdrawal of life support. *In re AMB, supra* at 206.

4. When requesting withdrawal of life support, the petitioner must "provide a second opinion from an independent physician or establish why this second opinion is not necessary." *Id.* at 208. Independent physician confirmation is inappropriate in cases involving a competent or formerly competent patient who expressed his or her wishes. *Id.* at 208 n 149, citing *In re Martin, supra* at 221-22.

5. As a matter of procedural due process, parents must be given notice of and an opportunity to be heard at any hearing related to a request to withdraw life support from their child. *In re AMB, supra* at 208-13.

6. Although a referee may conduct hearings relevant to a request to withdraw life support and make recommended findings of fact and conclusions of law, a judge, not a referee, must enter the order allowing withdrawal of life support. *Id.* at 216.

3.8 Taking Temporary Protective Custody of a Child Pursuant to the Safe Delivery of Newborns Law

A parent may surrender a newborn child to an emergency service provider. The Safe Delivery of Newborns Law, MCL 712.1 et seq., governs the procedures for surrendering a newborn.

MCL 712.1(2)(m) states that "'[s]urrender' means to leave a newborn with an emergency service provider without expressing an intent to return for the newborn." "'Newborn' means a child who a physician reasonably believes to be not more than 72 hours old." MCL 712.1(2)(j). MCL 712.1(2) defines "emergency service provider" as "a uniformed or otherwise identified employee or contractor of a fire department, hospital, or police station when such an individual is inside the premises and on duty." MCL 712.1(2)(e).

A. Responsibilities of the Emergency Service Provider

If a parent surrenders a child, who may be a newborn, to an emergency service provider, the emergency service provider must act under the assumption that the child is a newborn and immediately, without a court order, take temporary protective custody of the child. MCL 712.3(1). MCL 712.3(1)(a)–(d) provide that the emergency service provider shall do all of the following:

> "(a) Take action necessary to protect the physical health and safety of the newborn.
>
> "(b) Inform the parent that by surrendering the newborn, the parent is releasing the newborn to a child placing agency to be placed for adoption.
>
> "(c) Inform the parent that the parent has 28 days to petition the court to regain custody of the newborn.
>
> "(d) Provide the parent with written material approved by or produced by the family independence agency that includes, but is not limited to, the following statements:
>
> > (*i*) By surrendering the newborn, the parent is releasing the newborn to a child placing agency to be placed for adoption.
> >
> > (*ii*) The parent has 28 days after surrendering the newborn to petition the court to regain custody of the newborn.

*After 28 days, if a petition for custody has not been filed, the DHS must file a petition to terminate parental rights. See Section 8.17 for more information.

(*iii*) After the 28-day period to petition for custody elapses, there will be a hearing to terminate parental rights.*

(*iv*) There will be public notice of this hearing, and the notice will not contain the parent's name.

(*v*) The parent will not receive personal notice of this hearing.

(*vi*) Information the parent provides to an emergency service provider will not be made public.

(*vii*) A parent can contact the safe delivery line established under [MCL 712.20] for more information."

Note: Emergency service providers have additional requirements to meet when the child is surrendered pursuant to the Born Alive Infant Protection Act, MCL 333.1071 et seq. A discussion of the Born Alive Infant Protection Act is outside of the scope of this benchbook.

After the emergency service provider provides the parent with the aforementioned information, MCL 712.3(2)(a)–(g) require the emergency service provider to make a reasonable attempt to do all of the following:

"(a) Encourage the parent to provide any relevant family or medical information.

"(b) Provide the parent with the pamphlet produced under [MCL 712.20] and inform the parent that he or she can receive counseling or medical attention.

"(c) Inform the parent that information that he or she provides will not be made public.

"(d) Ask the parent to identify himself or herself.

"(e) Inform the parent that in order to place the newborn for adoption the state is required to make a reasonable attempt to identify the other parent, and then ask the parent to identify the other parent.

"(f) Inform the parent that the child placing agency that takes temporary protective custody of the newborn can provide confidential services to the parent.

"(g) Inform the parent that the parent may sign a release for the newborn which may be used at the parental rights termination hearing."

B. Responsibilities of the Hospital

When an emergency service provider, other than a hospital, takes a newborn into temporary protective custody, they must transfer the newborn to a hospital. MCL 712.5(1).

A hospital that takes a newborn into temporary protective custody must have the newborn examined by a physician. If the physician who examines the newborn determines that there is reason to suspect the newborn has experienced neglect or abuse, other than the surrendering of the child pursuant to the Safe Delivery of Newborns Law, or comes to a reasonable belief that the child is not a newborn,* the physician must immediately make a report of suspected child abuse to the DHS as required by the Child Protection Law, MCL 722.623. MCL 712.5(2).

*A newborn is a child that a physician reasonably believes to be not more than than 72 hours old. MCL 712.1(2)(j).

When the physician is not required to make a report to the DHS pursuant to MCL 712.5(2), the hospital must notify a child placing agency that the hospital has taken a newborn into temporary protective custody. MCL 712.5(3).